***

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 2985 of 2007
Date of decision: 17.12.2007

Smt. Atri and others

...Appellants

Versus

Azmat

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

****

Present: Mr. O.P.Sharma, Advocate for the appellants.

****

RAJESH BINDAL, J.

The plaintiffs are in second appeal before this Court against concurrent findings of fact by both the Courts below whereby suit filed by them for declaration to the effect that consent order dated February 18, 1989 on the basis of compromise of even date passed by the learned Additional District Judge, Gurgaon suffered by Smt. Nazarbi (deceased) was not binding on the rights of the appellants/plaintiffs.

The earlier suit filed by the respondent/defendant was dismissed by the trial Court on March 5, 1987. However, in appeal before the lower Appellate Court in view of the compromise arrived at between the parties, namely, respondent/defendant and Smt. Nazarbi, the appeal was disposed of in terms of the compromise. The order suffered by Nazarbi way back in February 18, 1989 was sought to be challenged in the present suit. It is not disputed that consent order passed on February 18, 1989 was given due effect to in the revenue record. The plea of fraud and misrepresentation was raised to submit that Nazarbi never appeared before

***

the Court and filed application or thumb marked documents or Vakalatnama.

That fact as to whether Nazarbi appeared in the Court and defended the appeal filed by appellants/plaintiffs was duly proved on record with the evidence of the counsel, who had represented her. He had also proved on record the power of attorney signed by Nazarbi in his favour. Accordingly, the appellants/plaintiffs were not able to prove the fact that compromise effected in the earlier suit was a result of any fraud or misrepresentation. Even on the issue of limitation, the learned trial Court found that suit was highly belated. In the suit the challenge was to the order dated February 18, 1989 passed on compromise whereas the suit was filed on November 15, 1997. Even on the issue of maintainability of suit to challenge an earlier compromise order passed, the Court opined against the appellants/plaintiffs.

Even before the learned Lower Appellate Court, it was found that the appeal was initially contested by Nazarbi, which remained pending in the Court of learned Additional District Judge for about two years, she was duly represented by the counsel, who had proved her thumb marks on the Vakalanama and documents. It is not the allegation of the appellants/plaintiffs that counsels, who represented the parties in the earlier litigation had any interest in the property or were conniving with the respondent/defendant and accordingly their evidence could not be brushed aside being independent witnesses. The reports of the Finger Print Experts had to be discarded as the same run contrary to each other. The expert produced by the appellants/plaintiffs opined in their favour holding that both the thumb impressions were different whereas the other expert opined that thumb mark was super imposed on which no report was possible. Learned Courts below even found that Nazarbi had been changing her stand as was taken in the earlier litigation and in this litigation and accordingly, she could not be believed in the light of other evidence on record. She even stated wrongly about the facts or proceedings, which took place during the trial of the suit, which admittedly she attended.

In a case where the plea of fraud and misrepresentation is raised

***

heavy burden is cast on the person alleging the same and in the present case, the appellants/plaintiffs has not been able to discharge that burden. No evidence on record has been pointed out, which could lead to the conclusion that findings recorded by the Courts below are perverse in any manner. The same are plain and simple findings of fact recorded on appreciation of evidence.

No substantial question of law arises in the present appeal and the same is, accordingly, dismissed.

December 17 , 2007 **(Rajesh Bindal)**
Pka **Judge**